

EMMET, MARVIN & MARTIN, LLP
COUNSELLORS AT LAW



120 Broadway
New York, New York 10271
212-238-3000
www.emmetmarvin.com

Paul T. Weinstein
Partner
Tel: 212-238-3090
Fax: 212-238-3100
pweinstein@emmetmarvin.com

MEMO ENDORSED August 13, 2021

Via ECF

Hon. Edgardo Ramos
United States District Judge
U.S. District Court for the Southern District of N.Y.
40 Foley Square
New York, New York 10007

The application is granted. The case is stayed until September 2, 2021. Parties are directed to submit a further status report at that time.

It is SO ORDERED.


Edgardo Ramos, U.S.D.J.
Dated: 08/13/2021
New York, New York

Re: *David deMilhau v. The Bank of New York Mellon Corporation,*
Civil Action No. 20-cv-11062 (S.D.N.Y.)(ER)

Dear Judge Ramos:

We represent the Defendant, BNY Mellon, N.A. (“BNY Mellon”), the co-Trustee of the Dorothea H. deMilhau Revocable Trust dated March 18, 1996, as amended on March 29, 1996 (the “Trust”), in the above-captioned action (the “Action”).¹ We respectfully submit this status report pursuant to the Court’s June 22, 2021 Order, staying the above Action until today, August 13, 2021, and directing that the Parties submit a status report at that time. For the reasons below, it is respectfully requested that this case remain stayed until September 2, 2021, one week after the next appearance before the Hon. David Hopper of the Greenwich, Connecticut Probate Court, and that the Parties be directed to submit a status report at that time if the Action remains pending.

On June 10, 2021, BNY Mellon filed a Petition in the Greenwich Probate Court seeking termination of the Trust and distribution of assets to Plaintiff, Mr. de Milhau, or in the alternative that BNY Mellon be permitted to resign as Trustee or that the Probate Court provide instruction regarding the future administration of the Trust. Judge Hopper convened a conference on July 27, 2021, at which the parties, which included BNY Mellon, Mr. de Milhau, and the two remainder beneficiaries² (collectively, the “Probate Court Parties”), appeared. At the conference, the Probate Court Parties agreed to meet to discuss settlement of all issues involving the Trust, and to appear again before the Probate Court on August 26, 2021.

¹ The Complaint incorrectly identified the defendant as The Bank of New York Mellon Corporation, a holding company that has no connection to this matter.

² The remainder beneficiaries are the Greenwich Hospital Association of Greenwich, Connecticut and St. Paul’s Episcopal Society of Riverside, Connecticut.

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The Probate Court Parties conferred on August 4, 2021, and agreed to schedule a follow-up meeting. On August 10, Mr. de Milhau emailed me:

On the ... Southern District of New York case, I have decided to withdraw the complaint.... Please inform your client BNY Mellon that I am withdrawing the complaint in the ... Southern District of New York Case captioned David de Milhau v The Bank of New York Mellon Corporation.... [O]ur report for Judge Ramos [will] include the appropriate form for me to withdraw the complaint And the New York Case will be closed.... and ... com[e] to an end shortly....

Instead of pursuing this Action, Mr. de Milhau stated that he wished to obtain “guidance” regarding the Trust from Judge Hopper at the August 26 Probate Court conference, and requested that I prepare a notice of dismissal and joint report to Your Honor. I did so, and provided the draft notice and report to Mr. de Milhau on August 10 for his review. I did not hear further from him, and followed up on August 12. I still have not heard from Mr. de Milhau in response to the draft notice and joint report that he requested.

Under these circumstances, it is respectfully requested that this Action be stayed until September 2, 2021, which is one week following the next appearance in the Greenwich Probate Court, and that if this Action is not dismissed by that date, that the Parties be directed to provide Your Honor a further report at that time.

Respectfully submitted,

Paul T. Weinstein
Paul T. Weinstein

cc: David de Milhau
Via ECF and email